

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-218342

DATE: May 10, 1985

MATTER OF: Daniels & Parks General Contractors,
Inc.

DIGEST:

1. Where a potential protester fails to diligently seek information that would form the basis for its protest, such as not requesting information about award until 4 months after the quotes have expired, GAO dismisses its protest as untimely.
2. A contracting officer's request to verify a quote below the government estimate does not constitute notification of award.

Daniels & Parks General Contractors, Inc., protests the award of a contract to Palmetto Paint Co., Inc., under request for quotations No. F38601-84-Q-2865, issued on August 23, 1984, by the Contracting Division, Shaw Air Force Base, South Carolina. Daniels & Parks also claim proposal preparation and other costs. The solicitation, issued under the small purchase procedures of the Federal Acquisition Regulation (FAR), 48 C.F.R. Part 13 (1984), was for painting and caulking of a building at Shaw.

Daniels & Parks contends that despite its low quote (\$5,897), it was unreasonably eliminated from the competition.

We dismiss the protest and the claim for proposal preparation and other costs.

The Air Force argues, and we agree, that the protest is untimely because Daniels & Parks should have known the basis for it not later than October 6, 1984. Quotes were due on September 6, 1984. After receiving them, the contracting officer asked the protester to verify its price, which was below the government estimate. Upon learning

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that the protester had filed for reorganization under Chapter 11 of the Bankruptcy Code on May 24, 1984, the contracting officer determined that Daniels & Parks was nonresponsible. He did so on September 18, 1984, after a telephone consultation with the Small Business Administration (SBA) which advised him that since the value of the contract was less than \$10,000, under SBA regulations, 13 C.F.R. § 125.5, it was not necessary to refer the nonresponsibility determination to SBA for possible issuance of a Certificate of Competency (COC).^{1/} The Air Force awarded a contract to Palmetto on September 27, 1984 and issued a notice to proceed on December 21, 1984.

Daniels & Parks did not protest to our Office until March 18, 1985, stating that until that time it was unaware of the nonresponsibility determination and assumed that it had been awarded the contract. Daniels & Parks argues that it believed that paper work on the contract was merely slow, and since performance was not scheduled to begin until April, it had no reason to protest sooner.

Our Bid Protest Regulations, 4 C.F.R. § 21.2 (1985), require protests to be filed within 10 working days after the basis for them is known or should have been known. Further, a protester must diligently pursue the information that forms the basis of a protest, and if it does not do so within a reasonable time, our Office will dismiss its protest as untimely. South Bend Lathe, Inc., B-216356, Sept. 24, 1984, 84-2 CPD ¶ 343.

Under the small purchase procedures of the FAR, an unsuccessful offeror is only notified of an award upon request. See 48 C.F.R. § 13.106(b)(9). There is no showing that Daniels & Parks made such a request here. Moreover, a request to verify a quote below the government estimate is merely a means to confirm a price so as

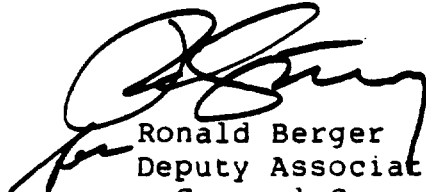
^{1/}Effective October 30, 1984, the SBA may not refuse to accept a referral for a COC from a government procurement officer pursuant to section 8(b)(7)(C) of the Small Business Act, 15 U.S.C. § 637(b)(7)(C), as amended by section 401 of the Small Business and Federal Procurement Competition Enhancement Act of 1984, Pub. L. No. 98-577, Title IV, 98 Stat. 3079 (1984).

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to bind the offeror and substantiate that the quote is without error. It is not a notification of award. K&P Inc. & Kirsch Maintenance Service, Inc., B-212263, B-212263.2, Oct. 11, 1983, 83-2 CPD ¶ 436.

Daniels & Parks was aware from Standard Form 19, entitled Invitation, Bid and Award, that the quote acceptance period was 30 days from September 6, 1984. Therefore, when the Air Force did not either request an extension or award Daniels & Parks a contract within this 30 days, the protester should have inquired as to the status of the procurement. At that point, it would have learned of the nonresponsibility determination and the award to Palmetto, the basis for its protest. Waiting more than 4 months after quotes have expired, in our opinion, does not constitute diligent pursuit.

We dismiss the protest and the claim for proposal preparation and other costs.


Ronald Berger
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General Counsel